

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 00-0192 FBT****Food and Beverage Tax****For The Tax Period: 1996, 1997, and 1998**

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ISSUES**I. Food and Beverage Tax: Imposition**

Authority: IC 6-9-12-1; IC 6-2.5-2-1; IC 6-2.5-4-1; IC 6-2.5-3-2

Taxpayer protests the assessment of food and beverage tax.

STATEMENT OF FACTS

Taxpayer opened several restaurants in Central Indiana. Taxpayer failed to remit food and beverage taxes. Taxpayer filed food and beverage tax returns but failed to remit payment. Audit assessed additional tax based upon information provided.

I. Food and Beverage Tax: Imposition**DISCUSSION**

The city-county council of a county that contains a consolidated city may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on any transaction in which food or beverage is furnished, prepared, or served as provided by IC 6-9-12-3 and IC 6-9-12-2. The same exemptions that are allowed to retail merchants under IC 6-2.5 are allowed for taxpayers that are subject to Indiana's county food and beverage tax. IC 6-9-12-4. The food and beverage tax "applies to any transaction in which food or beverage is furnished, prepared, or served." IC 6-9-12-3.

"The notice of proposed assessment is *prima facie evidence* that the department's claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1 (emphasis added). Taxpayer has not submitted any evidence or documentation to rebut the validity of the food and beverage tax imposed on transactions in which it furnished, prepared, or served foods and beverages. Therefore, the Department finds that the assessment of food and beverage tax is valid.

FINDING

Taxpayer's protest is denied.